



PELTON GRAHAM LLC

ADVOCATES FOR JUSTICE

August 26, 2020

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VIA CM/ECF

Magistrate Judge James Orenstein
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: *Loper v. Manetta Enterprises, Inc. et al.*
Civil Action No. 20 Civ. 01532 (RRM)(JO)

Dear Judge Orenstein:

This office represents named plaintiff Derek Loper (the “Plaintiff”) in the above-referenced matter. We write to respectfully request a conference with Your Honor to address Defendants’ failure to: (1) comply with Your Honor’s June 25, 2020 Scheduling Order (Dkt. No. 17) and (2) produce contact information for the potential plaintiffs, as set forth in the Court’s July 9, 2020 Order granting the parties’ Stipulated Motion to Certify an FLSA Collective Action (hereinafter the “216(b) Stipulation”).

I. Defendants’ Failure to Comply with Discovery Obligations

During the June 25, 2020 initial conference, Your Honor ordered that initial disclosures and discovery demands be exchanged by June 25, 2020 and July 9, 2020, respectively. (*See* Dkt. No. 17). Accordingly, Plaintiff served his initial disclosures on June 25, 2020 and interrogatories, document demands and requests for admissions on July 9, 2020. As of the date of this submission, Defendants have yet to exchange initial disclosures, discovery demands or formal responses to Plaintiff’s demands, despite repeated assurances that these materials were forthcoming.

In addition, throughout the litigation, Plaintiffs have requested information, both informally and in their discovery demands, regarding any insurance bonds and surety agreements under which Manetta has made a claim or pursuant to which claims coverage may be asserted in connection with the claims made in this action. However, despite repeated inquiries over the course of several weeks, Defendants have failed to provide responsive information.

II. Defendants’ Failure to Provide List of Collective Action Members

The parties’ 216(b) Stipulation stated that within thirty (30) days of the date of the Order Defendants would provide to Plaintiff’s counsel the “names and last known addresses, phone numbers and e-mail address...of all potential Plaintiffs who worked as saw cutters, laborers,

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machine operators, working foremen and other construction workers for Manetta Enterprises, Inc. or Manco Enterprises of New York, Inc., located at 44-17 54th Drive, Maspeth, New York 11378, at any time between March 24, 2017" and July 9, 2020 (i.e., the date of the order approving 216[b] notice) (the "216(b) Employee List"). (Dkt. No. 19-1). The 216(b) Stipulation further provided that "the information shall be supplied...digitally in one of the following formats: Microsoft Excel or Microsoft Word." (*Id.*).

On August 3, 2020, the undersigned e-mailed counsel for Defendants, Andrea Marcus, Esq., to check on the status of the 216(b) Employee List in order to ensure that we would be receiving the contact information for the collective action members by the August 8, 2020 deadline. On August 6, 2020, counsel for all parties participated in a phone call during which Ms. Marcus initially objected to producing contact information for employees who worked for Defendants when Loper was not employed at Manetta, before subsequently agreeing to provide the list by the end of the day. Later that day, Ms. Marcus informed Plaintiff's counsel that she would send us the employee list the following morning, as she needed to redact certain individuals' Social Security numbers. The next day, on August 7, 2020, Ms. Marcus e-mailed Plaintiff's counsel to inform us that she was not able to send the list until the next morning due to power outages.

On August 9, 2020, Ms. Marcus e-mailed certain 2011-2020 Employee Earnings Reports in non-readable PDF format, containing the number of regular and overtime hours that various employees worked and the amounts they were paid. However, these records did not include any of the contact information to which the parties stipulated such that Plaintiff's counsel would be able to send notice to potential opt-in plaintiffs. In response to our most recent attempts to meet and confer on these issues, Ms. Marcus informed Plaintiff's counsel that she was "on trial" but hopes to have the contact information by the end of the week. Ms. Marcus further informed Plaintiff's counsel that she "will be withdrawing from this case." Given the extended delay thus far and the representation that further delay is expected, we believe that a conference is necessary at this time.

* * *

Thus, Plaintiff respectfully requests a conference before Your Honor to discuss Defendants' failure to provide initial disclosures, responses to Plaintiff's discovery demands, including information about whether there was a payment bonding company for the work performed, and a list of the collective action members with address and other contact information, as described in the parties' 216(b) Stipulation.

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We appreciate Your Honor's attention to this matter. Please contact the undersigned should you have any questions regarding this submission.

Respectfully submitted,

/s/ Brent E. Pelton

Brent E. Pelton, Esq. of
PELTON GRAHAM LLC

cc: All Counsel (via ECF)